held, however, that the act does not encroach upon the judicial power vested in the courts, nor does it provide for cruel or unusual punishments. The question of cumulative sentences provided for by the statute, was raised in argument, but the court refused to pass upon it. A provision of the statute that persons who have twice previously been convicted of felony shall not be eligible to parole, drew from the Court the observation that it is doubtful whether the determination of the question of previous conviction is sufficiently provided for. Laws very similar, in general outline and purpose, to the Michigan statute have been enacted in other states. 81 Ohio Laws, 72; Indiana Acts 1897, p. 69; Illinois Laws of 1895, p. 158; Massachusetts Statutes 1895, c. 504. These statutes have been construed and held constitutional in the following cases: *State* v. *Peters,* 43 Ohio St. 629; *Miller* v. *State,* 149 Ind. 607, 49 N. E. Rep. 894, 40 L. R. A. 109; *Bloom* v. *State,* 155 Ind. 292, 58 N. E. Rep. 81; *People ex rel. Bradley* v. *The Illinois State Reformatory,* 148 Ill. 413; *George* v. *The People,* 167 Ill. 447; *Commonwealth* v. *Brown,* 167 Mass. 144; *Murphy* v. *Commonwealth,* 172 Mass. 264, 52 N. E. Rep. 505, 70 Am. St. Rep. 266, 43 L. R. A. 154.

COURTS—RULES OF PROPERTY—STARE DECISIS.—In an action to set aside a lease and recover the corporation's property, *held,* as a part of the decision, that where decisions of the Supreme Court of the state have become rules of property, the court is bound by the doctrine of stare decisis to follow them. *Hill et al.* v. *Atlantic & N. C. R. Co.* (1906), — N. C. —, 55 S. E. Rep. 854.

The dissenting opinion of CLARK C.J., states the doctrine to be far more liberal than the decision of the court held it to be. CLARK, C.J., said, "when a decision is wrong this court has overruled it, though it has been again and again repeated," citing *Hoke* v. *Henderson,* 15 N. C. 1, and *Watson* v. *Watson,* 56 N. C. 400. To the same effect are: *Snyder* v. *Gascoigne,* 11 Tex. 449, not following stare decisis when the decision is clearly wrong, *Elliot* v. *Ga. R. R. and Banking Co.* (1891), 87 Ga. 691, holding that the courts are bound by the rule of stare decisis, yet when a grave and palpable error, widely affecting the administration of justice, must be either solemnly sanctioned or repudiated, the maxim which applies is *"Fiat justitia ruat coelum."* To the same effect are, *Kneeland* v. *City of Milwaukee,* 15 Wis. 691; *In re MacDonald* (1895), 4 Oh. Dec. 396; *State* v. *Clark,* 9 Ore. 406; *Lamp* v. *Hastings,* 4 G. Greene, 448 (Ia.); *Paul* v. *Davis,* 100 Ind. 422. In *State* v. *Hill* (1896), 47 Neb. 456, it was held that in the absence of complications arising from property rights, it is the privilege, if not the duty of courts, to re-examine questions, and modify or overrule previous decisions shown to be wrong. As to the rule of property, this case rather supports the court in the principal case, but not otherwise. In *Leavit* v. *Morrow* (1856), 6 Oh. St. 71, it was held that a mere precedent alone is not enough to establish a legal principle; infallibility being accorded to no human tribunal. In *McDowell* v. *Oyer,* 21 Pa. St. (9 Harris) 417, the court says, "the adjudications of this court when they are free from absurdity, not mischevious in practice, and consistent with one another, are the law of the land." There are many cases supporting the Court's statement fully, e. g., the lower court must abide by

the higher court's decision whatever its own view, until the higher court's decision is reversed or overruled. *Julian* v. *Beal,* 34 Ind. 371; *Rochester and G. V. R. Co.* v. *Clark Nat'l Bank,* 60 Barb. 234; *People* v. *McGuire,* 45 Cal. 56; *Field* v. *People,* 3 Ill. (2 Scan.) 79; *Martin* v. *Martin,* 25 Ala. 201; *Gray* v. *Gray,* 34 Ga. 499. Then comes a list of decisions almost supporting the court in the principal case, but allowing a deviation from the doctrine of stare decisis, where there is palpable error: *Lindsay* v. *Lindsay,* 47 Ind. 283; *Lombard* v. *Lombard* (1879), 57 Miss. 171; *Reed* v. *Ownby* (1869), 44 Mo. 204; *Kearney* v. *Buttles* (1853), 1 Oh. St. 362; *McVay* v. *Igams,* 27 Ala. 238; *Hilm* v. *Courtis,* 31 Cal. 399; *Braxan* v. *Bressler,* 64 Ill. 488; *Rothschild* v. *Grix,* 31 Mich. 150; *Sheldon* v. *Newton,* 3 Oh. St. 494 (if decision has been undisturbed for twenty years); and in *Davidson* v. *Beggs,* 61 Ia. 309 (if it has been the law of the state for fifteen years), stare decisis is the rule absolute. *Tribble* v. *Taul,* 23 Ky. (7 T. B. Mon.) 59; while in *Minnesota Min. Co.* v. *Nat'l Min. Co.,* 70 U. S. (3 Wall, 332), it was held that stare decisis was the doctrine if the title to property had been fixed once, and practically the same point was likewise decided in the celebrated case of *Gibbon* v. *Ogden,* 17 Johns (N. Y.) 488. That a single decision does not establish stare decisis, see *State* v. *Williams,* 13 S. C. 546; *Pratt* v. *Brown,* 3 Wis. 603; *Smith* v. *Smith,* 13 La. 441. The ultra vires feature of this case was discussed in 5 MICH. LAW REVIEW 5, p. 379.

CRIMINAL LAW—EXCLUSION OF PUBLIC FROM TRIALS.—The defendant was charged with the rape of a girl under the age of consent. When the girl was called to testify, the judge, anticipating that the evidence would be particularly filthy and obscene, ordered that the courtroom be cleared of everyone except the attorneys, defendant, court officers, newspaper reporters, and one other witness. No objection was made at the time by the defendant, but after conviction and sentence he appealed on the ground that he had not been accorded a public trial as guaranteed by the Constitution. *Held,* that the exclusion was too general, and that the trial was not public; also that the defendant by his silence at the time of the exclusion did not waive his constitutional right to a public trial, and so could set it up now on error. *State* v. *Hensley* (1906), — Ohio —, 79 N. E. Rep. 462.

The Constitution of the United States and the constitutions and statutes of all the states guarantee to every person charged with crime a speedy and public trial. It seems to be well recognized that a public trial is accorded even though everyone who might wish to attend cannot on account of the limited space in the courtroom. It is also well recognized that the judge in his discretion may exclude objectionable persons or others for good cause. COOLEY, CONSTITUTIONAL LIMITATIONS. Beyond these fundamental propositions, however, the subject becomes one of considerable difficulty. Granting that the judge has certain discretion, the question is how far can he go in excluding spectators and still not abrogate the right of the prisoner to a public trial? This question was early taken up in the State of California, and it was decided that the matter was almost entirely within the discretion of the judge. In a case in which all persons were excluded except the judge,